

Janet Alter  
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February 13, 2001

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VIA FEDERAL EXPRESS

The Office of the Secretary  
Federal Communications Commission  
445 12th Street, N.W.  
Room TWB 204  
Washington, DC 20554

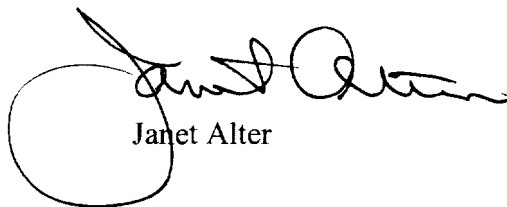
Attention: Magalie Roman Salas

Re: CS Docket No. 00-253 -- Reply Comments on City Signal  
Communications, Inc. Petition for Declaratory Ruling for  
Use of Rights-of-Way in Cleveland Heights, Ohio

Dear Ms. Salas:

Enclosed you will find one (1) original and seven (7) copies of Reply Comments on City Signal Communications, Inc. Petition for Declaratory Ruling concerning use of public rights-of-way for access to poles in Cleveland Heights, Ohio pursuant to Section 253. Please file stamp and return one (1) copy in the enclosed self-addressed, stamped envelope. Thank you for your cooperation in this matter.

Very truly yours,



Janet Alter

JA:kaw

Enclosure

cc: Nathaniel Hawthorne, Esq. (w/encl.)  
Trudy Hercules (w/encl.)  
Janice Myles (w/encl.)  
International Transcription Services, Inc. (w/encl.)  
John H. Gibbon, Esq. (w/o encl.)

No. of Copies rec'd 076  
List A B C D E

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, DC 20554**

In the Matter of Petition for  
Declaratory Ruling

City Signal Communications, Inc.,

CS Docket No. 00-253

Petitioner,

v.

City of Cleveland Heights,

Defendant.

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**Reply Comments of the City of Cleveland Heights, Ohio**

The City of Cleveland Heights files the attached Affidavit of John H. Gibbon, Law Director for the City of Cleveland Heights, Ohio to supplement its previously filed Opposition to City Signal Communications, Inc.'s Petition for Declaratory Ruling Concerning Use of Public Rights of Way for Access to Poles in Cleveland Heights, Ohio. This supplemental Affidavit is filed in response to comments filed on behalf of City Signal Communications, Inc.'s Petition for Declaratory Ruling.

February 12, 2001  
Date

John H. Gibbon  
John H. Gibbon (Reg. No. 0010986)  
Law Director

City of Cleveland Heights  
40 Severance Circle  
Cleveland Heights, Ohio 44118  
Telephone: (216) 291-5775  
Facsimile: (216) 291-3731  
Email: jhg@walterhav.com

CERTIFICATE OF SERVICE

A copy of the foregoing Reply Comments of the City of Cleveland Heights, Ohio was deposited in the regular U.S. Mail, postage prepaid, addressed to Nathaniel Hawthorne, Esq., Attorney for Petitioner, 27600 Chagrin Boulevard, Cleveland, Ohio 44122 this 12 day of February, 2001.



John H. Gibbon

STATE OF OHIO

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) SS

COUNTY OF CUYAHOGA

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***AFFIDAVIT OF JOHN H. GIBBON***

I, JOHN H. GIBBON, having first been duly sworn accordingly to law, depose and state as follows:

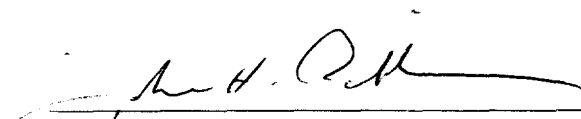
1. I am the Law Director for the City of Cleveland Heights, Ohio.
2. On February 5, 2001, Cleveland Heights City Council authorized by Ordinance No. 16-2001 an Agreement with Metromedia Fiber Network Services, Inc. under which Metromedia would install fiber optic conduit under certain streets within the City of Cleveland Heights and install additional conduit for the City's use and which the City may in turn make available to other service providers at a rental charge to be determined by City Council. A copy of Ordinance No. 16-2001 is attached hereto.
3. The aforesaid Agreement with Metromedia Fiber Network Services, Inc. was executed by the Cleveland Heights City Manager on February 6, 2001. Under the terms of the Agreement, fiber optic conduit beneath Euclid Heights Boulevard, Lee Road and Mayfield Road will be available for service providers, including City Signal, as of August 1, 2001.
4. At a recent meeting between myself and City Signal representatives, City Signal indicated that it was interested in placing its fiber within the conduit to be supplied by the City effective August 1, 2001 and that the routing of the conduit would satisfy City Signal's needs. City Signal further indicated that it would be willing to pay reasonable charges for use of the conduit and that it considered the charges currently being assessed by the City of Dublin, Ohio for use of its conduit to be reasonable charges.
5. The City of Cleveland Heights has retained the services of Columbia Telecommunications Corporation to assist it in determining appropriate charges for use of the

aforesaid conduit and the City of Cleveland Heights anticipates making a determination on this issue, in consultation with City Signal and other potential users of the conduit, within the next several weeks.


6. The Agreement between the City of Cleveland Heights and Metromedia and the opportunity which it presents for City Signal exemplifies a cooperative effort to meet the interests of all parties, including the interests of the City in maintaining the property values in the Community and providing the potential for providing sophisticated telecommunications services for the Community's residents, businesses and institutions.

7. Based upon conversations with City Signal representatives, it is anticipated that City Signal will withdraw its claim filed with the FCC against the City of Cleveland Heights within the next several weeks. In the alternative, the City will file a motion to dismiss the claim of City Signal as being moot.

FURTHER AFFIANT SAYETH NAUGHT.

  
JOHN H. GIBBON

SWORN TO BEFORE ME and subscribed in my presence this 13<sup>th</sup> day of February, 2001.

  
NOTARY PUBLIC  
JANET ALTER, Attorney At Law  
Notary Public - State of Ohio  
My commission has no expiration date.  
Section 147.03 R.C.

**ORDINANCE NO. 16-2001(MS)**

**By Council Member Caplan**

An Ordinance authorizing the City Manager to enter into an agreement with Metromedia Fiber Network Services, Inc. for use of the City's right-of-way; and declaring an emergency.

WHEREAS, Metromedia Fiber Network Services, Inc. has made application to the City to place fiber optic conduit within and beneath a portion of Euclid Heights Boulevard and Lec Road; and

WHEREAS, this Council has determined that it would be in the City's best interest to permit Metromedia Fiber Network Services, Inc. to place fiber optic conduit within the City's rights-of-way upon the terms and condition set forth below.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Cleveland Heights, Ohio, that:

SECTION 1. The City Manager be, and he is hereby, authorized to enter into an agreement on behalf of the City with Metromedia Fiber Network Services, Inc. which would permit Metromedia Fiber Network Services, Inc. to place fiber optic conduit within and beneath a portion of Euclid Heights Boulevard and Lec Road. The agreement shall be substantially in accordance with the proposal of Metromedia Fiber Network Services, Inc. on file with the Clerk of Council and shall contain the following terms: installation of the fiber optic conduit shall be in strict accordance with the plans approved by the City; the fiber optic conduit shall be installed by a lateral boring process in such a manner as not to disturb travel over the City's rights-of-way; and Metromedia Fiber Network Services, Inc. shall install additional fiber optic conduit which shall be dedicated to the City for its use and which the City may in turn make available to other service providers at a rental charge to be determined by City Council.

SECTION 2. Notice of the passage of this Ordinance shall be given by publishing the title and abstract of its contents, prepared by the Director of Law, once in one newspaper of general circulation in the City of Cleveland Heights.

SECTION 3. This Ordinance is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health and safety of the inhabitants of the City of Cleveland Heights, such emergency being that in order to reach a favorable agreement with Metromedia Fiber Network Services, Inc. it is necessary that the within Ordinance become effective at the earliest time permitted by law. Wherefore, provided it receives the affirmative vote of five or more of the members elected or appointed to this Council, this Ordinance shall take effect and be in force immediately upon its passage; otherwise, it shall take effect and be in force from and after the earliest time allowed by law.

ORDINANCE NO. 16-2001(MS)

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EDWARD J. KELLEY, Mayor  
President of the Council

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THOMAS K. MALONE  
Clerk of Council

PASSED: February 5, 2001